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11 Attorneys for Plaintiffs
12 BEAUMONT RV, INC.

13
14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

16 * * *

17 BEAUMONT RV, INC., a California)
18 Corporation,)
19 Plaintiff,)
20 v.)
21 CARBON EMERY RV, INC., a Utah)
22 Corporation.)
23 Defendant.)
24)
25)

Case No.

**COMPLAINT FOR SERVICE
MARK INFRINGEMENT, FALSE
DESIGNATION OF ORIGIN, AND
UNFAIR COMPETITION**

DEMAND FOR JURY TRIAL

26 COMES NOW Plaintiff BEAUMONT RV, INC. for its complaint against
27 Defendant CARBON EMERY RV, INC., a corporation organized and existing
28

1 under the laws of Utah, hereby alleges as follows:

2 **THE PARTIES**

3
4 1. Plaintiff, BEAUMONT RV, INC. (“BEAUMONT”), is a corporation
5 organized and existing under the laws of the state of California, located at 45640
6 23RD ST WEST, LANCASTER CA 93536.

7
8 2. Defendant CARBON EMERY RV, INC. (“CARBON EMERY”), on
9 information and belief, is corporation organized and existing under the laws of
10 Utah having an address at 4590 NORTH HWY 6 HELPER, UT 84526 and is
11 conducting business in the Eastern District of California.
12

13
14 **JURISDICTION AND VENUE**

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16 3. This is a civil action arising under the Lanham Act, 15 U.S.C. §§ 1051
17 *et seq.*, and under the statutory and common law of the State of California. Subject
18 matter jurisdiction being expressly conferred in accordance with 15 U.S.C. § 1121
19 and 28 U.S.C. § 1338(a). This court has pendant jurisdiction over all related claims
20 herein in accordance with 28 U.S.C. § 1338(b). This Court also has jurisdiction of
21 this case under 28 U.S.C. § 1332 because the citizenship of the parties is entirely
22 diverse and the amount in controversy exceeds \$75,000.00.
23

24
25 4. This Court has supplemental jurisdiction over Plaintiffs’ pendent state
26 law claims pursuant to 28 U.S.C. § 1367 in that the state law claims are integrally
27 interrelated with Plaintiffs’ federal claims and arise from a common nucleus of
28

1 operative facts such that the administration of Plaintiff's state law claims with its
2 federal claims furthers the interest of judicial economy.
3

4 5. This Court has personal jurisdiction over Defendant CARBON
5 EMERY because it conducts business in the State of California giving rise to the
6 presently asserted claims of service mark infringement, false designation of origin,
7 and unfair competition. Upon information and belief, CARBON EMERY's acts of
8 infringement of BEAUMONT's EPIC RV and EPIC RV LIQUIDATORS service
9 marks were committed in the Eastern District of California, within the jurisdiction
10 of this Court. Upon information and belief, CARBON EMERY has advertised its
11 services under the infringing EPIC RV mark in this state and has transacted
12 business by selling recreation vehicles to consumers within this state under the
13 infringing mark. CARBON EMERY has engaged in substantial activity within
14 California and this judicial district and has had substantial contacts there, having
15 purposefully directed its infringing activities at the forum and purposefully availed
16 itself of the privilege of conducting activities in the forum, as further explained
17 below. Defendant has caused injury to Plaintiff within California and within this
18 judicial district.
19

20 6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 in that
21 Defendant have committed a significant number of the offending acts in this
22 judicial district. Upon information and belief, venue is also proper in this district
23 because Defendant's products are available in California, are sold to residents of
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1 California over the internet, and are shipped into California on a regular basis.
2
3

4 **FACTS COMMON TO ALL COUNTS**

5 7. This is an action for damages and injunctive relief resulting from the
6 infringement of Plaintiff's service mark, false designation of origin, and unfair
7 competition, pursuant to 15 U.S.C. § 1051, et seq., California Business &
8 Professions Code §§ 17000, et seq., California Business & Professions Code §§
9 17200, et seq., and the common law.
10
11

12 8. Defendant CARBON EMERY is a Utah company that sells recreation
13 vehicles (RVs), including fifth wheels, travel trailers, toy haulers, and cargo trailers
14 under the service mark EPIC RV from a dealership located at 5129 North Hwy 6,
15 Helper UT 84526 (the "Utah Dealership").
16

17 9. Plaintiff BEAUMONT operates several RV dealerships in California
18 and Texas, including a dealership doing business under the service marks EPIC RV
19 and EPIC RV LIQUIDATORS in Madera, California, which is located at 10130
20 CA-41, Madera, CA 93636 ("EPIC RV Madera") and a dealership doing business
21 under the service marks EPIC RV and EPIC RV DFW in Fort Worth, Texas, which
22 is located at 2020 S. Cherry Lane Suite 200, Fort Worth, TX 76108 ("Epic RV
23 Texas"). BEAUMONT sells RVs throughout most of the United States under the
24 EPIC RV and EPIC RV LIQUIDATORS service marks, and has been using the
25 EPIC RV mark itself and through its predecessors in interest since 2014.
26
27
28

1 10. The EPIC RV word mark is inherently distinctive and is associated in
2 the minds of consumers with BEAUMONT's high quality retail services and
3 customer care in the field of RV dealerships.
4

5 11. James Tuck has been involved in the RV dealership business since
6 2008. He is a general manager for Plaintiff BEAUMONT and manages EPIC RV
7 Madera. Mr. Tuck also heads the marketing efforts for BEAUMONT's EPIC RV
8 brand, including the print advertising, internet advertising, and social media
9 marketing. Mr. Tuck was the original user of the EPIC RV mark, and began using
10 the EPIC RV mark in commerce in connection with retail RV dealership services
11 in 2014 through his EPIC RV dealership in Sacramento, California.
12
13

14 12. In 2018, Mr. Tuck transitioned away from his dealership in
15 Sacramento, and joined BEAUMONT to open the EPIC RV Madera dealership.
16 The valuable goodwill associated with the EPIC RV mark was transferred to
17 BEAUMONT, and the use in commerce of the EPIC RV mark continued at the
18 EPIC RV Madera without interruption. BEAUMONT has also used the EPIC RV
19 LIQUIDATORS mark in commerce at the EPIC RV Madera dealership since its
20 opening in 2018.
21
22
23

24 13. Since the first uses of the EPIC RV word mark, BEAUMONT has
25 steadily expanded its business, growing sales of RVs under the EPIC RV and EPIC
26 RV LIQUIDATORS marks and expanding to new business locations.
27 BEAUMONT has current and imminent plans to open a new dealership location in
28

1 Las Vegas, Nevada under the EPIC RV mark and is actively pursuing further
2 locations in and around the state of Utah.

3
4 14. BEAUMONT promotes its retail services under the EPIC RV and
5 EPIC RV LIQUIDATORS marks throughout the US through advertisements and
6 social media. BEAUMONT and Jim Tuck have collectively spent millions of
7 dollars since 2014 promoting the EPIC RV mark and brand. BEAUMONT and its
8 predecessors in interest have for years expended time and effort in promoting the
9 EPIC RV word mark in connection with quality retail RV dealership services and
10 customer care through print advertisements, internet-based advertisements on its
11 websites <https://www.epicrvliquidators.com/> and <https://www.epicrvdfw.com/>, and
12 through social media, examples of which are attached hereto collectively as
13 Exhibit A and incorporated herein by this reference. Under the EPIC RV mark
14 and brand, Mr. Tuck has provided personal communication and support to
15 customers through social media on a daily basis to establish a very warm and
16 personalized relationship with BEAUMONT's existing and prospective customers
17 throughout much of the US.

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22 15. BEAUMONT's commitment to and efforts promoting the EPIC RV
23 brand has established widespread recognition of the EPIC RV and EPIC RV
24 LIQUIDATORS marks among the RV consumer community. EPIC RV Madera is
25 the second highest seller of toy hauler RVs in the United States, and continues to
26 grow its RV sales.

1 16. BEAUMONT is the holder of common law rights in the EPIC RV
 2 word mark dating back to 2014 by virtue of the use of this mark in commerce in
 3 connection with RV Dealership services. BEAUMONT's sales of RVs reach much
 4 of the contiguous United States, including Utah and the states adjacent thereto, and
 5 thus BEAUMONT's trademark rights in the EPIC RV and EPIC RV
 6 LIQUIDATORS extend into Utah. BEAUMONT also has pending federal
 7 trademark applications for EPIC RV for use in connection with *RV Dealerships*
 8 (US Trademark Application No. 97194237 filed on December 29, 2021 – “the ‘237
 9 Application”), and EPIC RV LIQUIDATORS for use in connection with *RV*
 10 *Dealerships* (US Trademark Application No. 97111598 filed on November 5, 2021
 11 – “the ‘598 Application”). Copies of the file histories for the ‘237 Application and
 12 the ‘598 Application attached hereto as Exhibits B and C, respectively, and are
 13 incorporated herein by this reference.
 14

15 17. As a result of substantial development, marketing and advertising
 16 expenditures, and many years of continuous and extensive use of the EPIC RV and
 17 EPIC RV LIQUIDATORS marks, BEAUMONT has developed strong recognition
 18 of and goodwill in the EPIC RV and EPIC RV LIQUIDATORS marks, which is of
 19 great importance and value to BEAUMONT.
 20

21 ///

Infringement of the EPIC RV and EPIC RV LIQUIDATORS marks by
CARBON EMERY RV, Inc.

18. In 2016, Mr. Tuck had a chance social encounter with Jeff Castle on an RV vacation trip in near Moab, Utah. During the trip, Mr. Tuck had a friendly, informal conversation with Mr. Castle in which Mr. Castle inquired about Mr. Tuck's business activities, marketing strategies, including web-based and social media marketing, and general business practices related to the EPIC RV Madera dealership. Mr. Tuck was unguarded in the discussion, believing that Mr. Castle was only seeking general guidance in the RV dealership business. Mr. Castle also made multiple follow up phone calls to Mr. Tuck with further inquiries about Mr. Tuck's business practices in the RV industry.

19. On information and belief, Mr. Castle is the cousin and former business partner of Jason Child, the founder and owner of Defendant CARBON EMERY. On information and belief, Mr. Child utilized the information provided to Mr. Castle in developing his business plan for forming CARBON EMERY and establishing the RV dealership business owned by CARBON EMERY.

20. On information and belief, Mr. Child adopted the EPIC RV mark and began using it in connection with the Utah Dealership with knowledge of BEAUMONT's prior use of the EPIC RV and EPIC RV LIQUIDATORS marks and the national prominence of the EPIC RV and EPIC RV LIQUIDATORS marks in the RV market. On information and belief, CARBON EMERY acquired the

1 domain www.epicrv.com with the intent to benefit from the goodwill associated
2 with the EPIC RV and EPIC RV LIQUIDATORS marks established and built up
3 by James Tuck and BEAUMONT. Screen shots taken on December 22, 2021 of
4 CARBON EMERY's website promoting the Utah Dealership are attached hereto
5 as Exhibit D and incorporated herein by this reference.
6
7

8 21. BEAUMONT recently learned of CARBON EMERY's infringing
9 activity by virtue of communications from third parties confused by CARBON
10 EMERY's unauthorized and infringing use of the EPIC RV mark. In one
11 instance, a CARBON EMERY customer contacted EPIC RV Madera in or around
12 late July, 2021, believing that EPIC RV Madera is affiliated with CARBON
13 EMERY. The CARBON EMERY customer called EPIC RV Madera seeking
14 maintenance assistance for an RV that was purchased from the Utah Dealership.
15 On information and belief, CARBON EMERY customer contacted EPIC RV
16 Madera as a result of confusion caused on CARBON EMERY's use of the EPIC
17 RV mark. In another instance, an RV parts distributor, Andersen Manufacturing,
18 Inc. (DBA, Andersen Hitches), sent RV parts purchased by CARBON EMERY to
19 EPIC RV Madera in or around early August, 2021. On information and belief,
20 Andersen Hitches send the RV parts to EPIC RV Madera due to confusion
21 resulting from CARBON EMERY's use of the EPIC RV mark. These instances
22 are exemplars of the confusion caused by CARBON EMERY's unauthorized and
23 infringing use of the EPIC RV mark. Such confusion in the RV market will
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1 continue and likely increase as (1) CARBON EMERY continues its unauthorized
2 use of the EPIC RV mark to advertise and promote its business, and (2)
3 BEAUMONT continues with the expansion of its business under the EPIC RV and
4 EPIC RV LIQUIDATORS marks, unless CARBON EMERY is made to cease and
5 desist its unauthorized use of the EPIC RV mark.
6
7

8 22. On information and belief, defendant CARBON EMERY is directing
9 advertisement and conducting sales activities in California and targeting California
10 consumers. On information and belief, the reach of defendant CARBON
11 EMERY's advertisements featuring the EPIC RV mark includes California and
12 CARBON EMERY is specifically targeting the California market. CARBON
13 EMERY's epicrv.com website is listed at or near the top of Google searches
14 performed by computers present in this District using search terms that are likely to
15 be used by a consumer intending to find EPIC RV Madera. For example, Exhibit
16 E, which is incorporated herein by this reference, includes Google search results
17 provided to a computer located in this district showing epicrv.com as the first
18 search result for the following searches: "epic rv recreational vehicle", "epic rv
19 fifth wheel", and "epic rv forest river" (Forest River is an RV brand sold by EPIC
20 RV Madera). These search results show that California consumers in this district
21 are likely to find epicrv.com website when seeking out EPIC RV Madera.
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27 23. CARBON EMERY's epicrv.com website is used to promote and
28 advertise the Utah Dealership, and is a highly interactive website. Consumers in

1 California and elsewhere can apply for financing through the epicrv.com website,
2 sharing their personal and financial information over the web in order to submit an
3 application for financing and purchasing an RV from the Utah Dealership. The
4 epicrv.com application page includes all of the elements of a vehicle purchase
5 application for a potential buyer in California or elsewhere, including the particular
6 RV that the potential buyer wishes to purchase, contact and personal identification
7 information, housing status information, banking information, employment
8 information, and personal references (see Exhibit C). Thus, the epicrv.com
9 website is an online storefront for the Utah Dealership accessible to consumers
10 within this district. On information and belief, Californians can purchase and
11 receive delivery of an RV from the Utah Dealership without ever visiting the Utah
12 Dealership. On information and belief, CARBON EMERY delivers RVs
13 purchased from its Utah Dealership to customers in California.

14
15
16 24. On information and belief, CARBON EMERY is engaging in
17 advertising in California and is fully aware of BEAUMONT's prior rights in the
18 EPIC RV and EPIC RV LIQUIDATORS marks. On information and belief,
19 CARBON EMERY is using the EPIC RV mark and the epicrv.com domain and
20 website in commerce to appropriate the significant value and goodwill that
21 BEAUMONT and Mr. Tuck have built through extensive and longstanding
22 promotion and use of the EPIC RV and EPIC RV LIQUIDATORS marks.
23 CARBON EMERY has caused and will continue to cause consumer confusion as
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1 to the source of the services BEAUMONT offers, and has caused and will very
2 likely continue to cause consumers, suppliers, and others to wrongly believe that
3 CARBON EMERY's services are associated with, affiliated with, or sponsored by
4 BEAUMONT.
5

6 25. Through its unauthorized use of the EPIC RV mark, CARBON
7 EMERY will cause additional harm to BEAUMONT with respect to its relations
8 with RV manufacturers and other vendors. On information and belief, CARBON
9 EMERY's unauthorized use of the EPIC RV mark will cause confusion amongst
10 RV manufacturers and their agents with respect the reputation of BEAUMONT
11 and its high-quality dealership services, which will affect BEAUMONT's ability to
12 establish new dealership relations with RV manufacturers. On information and
13 belief, CARBON EMERY's unauthorized use of the EPIC RV mark will cause
14 confusion amongst various vendors, and negatively impact BEAUMONT's
15 existing and prospective relationships with such vendors.
16

17 26. On information and belief, CARBON EMERY has been using the
18 EPIC RV mark since at least as early as December 2020 based on the registration
19 of EPIC RV as a fictitious business name with the Utah Division of Corporations,
20 as indicated by the record of the registration retrieved on November 2, 2021 from
21 the online database of business registrations provided by the Utah Division of
22 Corporations, which is attached hereto Exhibit F and incorporated herein by this
23 reference. On information and belief, CARBON EMERY has thus engaged in
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1 infringement of BEAUMONT's rights in the EPIC RV and EPIC RV
2 LIQUIDATORS service marks for at least one year.

3
4 27. On information and belief, CARBON EMERY is intentionally
5 creating confusion between its RV Dealership services under the EPIC RV mark
6 and BEAUMONT's EPIC RV and EPIC RV LIQUIDATORS marks.
7
8 BEAUMONT is informed and believes, and thereon allege, that CARBON
9 EMERY's use of the EPIC RV mark is a knowing and willful attempt to trade on
10 the goodwill created by BEAUMONT and James Tuck in the EPIC RV and EPIC
11 RV LIQUIDATORS marks.
12

13 **COUNT 1**

14 **FALSE DESIGNATION OF ORIGIN, AND UNFAIR COMPETITION**

15 **UNDER LANHAM ACT § 43**

16 **(15 U.S.C. §1125(a))**

17
18
19 28. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1
20 through 27, inclusive, above as though the same were fully set forth herein.

21 29. Defendant's uses of the EPIC RV mark and the www.epicrv.com
22 domain as alleged herein, without Plaintiff's consent, constitute false designation
23 of origin, and unfair competition in violation of Section 43(a) of the Lanham Act,
24 15 U.S.C. § 1125(a). Defendant's false designation of origin, and unfair
25 competition are likely to cause confusion, or cause mistake, or to deceive the
26 public as to the source, quality and nature of Defendant's services.
27
28

1 30. On information and belief, Defendant has offered for sale and sold
 2 RVs and thus provided RV dealership services under the EPIC RV mark in
 3 California and in the Eastern District of California with full knowledge of
 4 Plaintiffs' ownership and use of the EPIC RV and EPIC RV LIQUIDATORS
 5 marks, and with full knowledge of the consumer's recognition and association of
 6 the EPIC RV and EPIC RV LIQUIDATORS marks with Plaintiff's RV dealership
 7 services, for the purpose of trading upon the goodwill and reputation associated
 8 with Plaintiff's EPIC RV and EPIC RV LIQUIDATORS marks, to confuse
 9 consumers as to the origin and sponsorship of Defendant's services, to pass off
 10 Defendants' services in commerce as those of Plaintiff, and to obtain recognition
 11 of and demand for Defendant's rival RV dealership services that it otherwise
 12 would not have had.

13 31. Defendant's unauthorized use of the EPIC RV mark and epicrv.com
 14 domain is likely to cause and has caused confusion, mistake, and deception in the
 15 mind of the purchasing public as to the affiliation, connection or association of
 16 Defendant and its services with those of Plaintiff, and as to the origin, sponsorship
 17 or approval of Defendant and its services and, thus, constitutes infringement of
 18 Plaintiff's rights, all in violation of 15 U.S.C. § 1125(a).

19 32. Plaintiff is entitled to recover from Defendant the actual damages that
 20 it sustained and/or is likely to sustain as a result of Defendant's wrongful acts.
 21 Plaintiff is presently unable to ascertain the full extent of the monetary damages

1 that it has suffered and/or is likely to suffer by reason of Defendants' acts of false
2 designation of origin.

3
4 33. Plaintiff is further entitled to recover from Defendant the gains,
5 profits, and advantages that Defendant has obtained as a result of their wrongful
6 acts. Plaintiff is presently unable to ascertain the full extent of the gains, profits,
7
8 and advantages that Defendant has realized by reason of its acts of service mark
9 infringement, false designation of origin and unfair competition.

10
11 34. Defendant had direct and full knowledge of Plaintiff's prior use of and
12 rights in the EPIC RV and EPIC RV LIQUIDATORS marks before the acts
13 complained of herein. The knowing, intentional and willful nature of the acts set
14 forth herein renders this an exceptional case under 15 U.S.C. § 1117 such that
15
16 Plaintiff is entitled to an award of enhanced damages and profits

17
18 35. Defendant's aforesaid acts are greatly and irreparably harming to
19 Plaintiff and will continue to harm Plaintiff unless restrained by this Court, and,
20 therefore, Plaintiff is without an adequate remedy at law.

21
22 36. Plaintiff is entitled to preliminary and permanent injunctive relief
23 prohibiting Defendant from using the EPIC RV mark and any other trade name,
24 trademark, or domain name that is likely to be confused with the EPIC RV and
25 EPIC RV LIQUIDATORS marks.
26
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28

COUNT 2

INFRINGEMENT OF SERVICE MARK AND UNFAIR COMPETITION

UNDER COMMON LAW

37. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1 through 36, inclusive, above as though the same were fully set forth herein.

38. On information and belief, Defendant began using the EPIC RV mark and the epicrv.com domain in California and in this District with full knowledge of Plaintiff's common law trademark rights in the EPIC RV and EPIC RV LIQUIDATORS marks for the purpose of trading upon the goodwill associated with Plaintiff's marks, and to obtain recognition and demand for its RV dealership services that it otherwise would not have had.

39. Defendant's unauthorized uses of the EPIC RV mark and the epicrv.com domain have caused confusion and mistake in the mind of the purchasing public and, thus, constitutes infringement of Plaintiff's rights and unfair competition, all in violation of the common law. On information and belief, Defendant's acts of infringement are deliberate and willful. On information and belief, Defendant is expanding its infringing use of the EPIC RV mark in this district and others with full knowledge of Plaintiff's senior rights in its EPIC RV and EPIC RV LIQUIDATORS marks, with the intention to usurp Plaintiff's rights.

40. Plaintiff is entitled to recover from Defendant the actual damages that it sustained and/or is likely to sustain as a result of Defendant's wrongful acts.

1 Plaintiff is presently unable to ascertain the full extent of the monetary damages
2 that it has suffered and/or is likely to suffer by reason of Defendant's acts of
3 service mark infringement.
4

5 41. Plaintiff is further entitled to recover from Defendant the gains,
6 profits, and advantages that Defendant has obtained as a result of its wrongful acts.
7 Plaintiff is presently unable to ascertain the full extent of the gains, profits, and
8 advantages that Defendant has realized by reason of their acts of service mark
9 infringement.
10

11 42. Defendant's aforesaid acts are greatly and irreparably harming to
12 Plaintiffs and will continue to harm Plaintiff unless restrained by this Court, and
13 therefore Plaintiff is without an adequate remedy at law.
14

15 43. Plaintiff is entitled to preliminary and permanent injunctive relief
16 prohibiting Defendant from using the EPIC RV mark and any other trade name,
17 service mark, trademark, or domain name that is likely to be confused with the
18 EPIC RV and EPIC RV LIQUIDATORS marks.
19

20 21 **COUNT 3**

22 **UNFAIR COMPETITION AND UNFAIR BUSINESS PRACTICES**

23 **(California Business & Professions Code sections 17000, et seq. and**
24 **17200 et seq.)**
25

26 44. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1
27 through 43, inclusive, above as though the same were fully set forth herein.
28

1 45. Defendant's unlawful conduct, including use of Plaintiff's EPIC RV
2 and EPIC RV LIQUIDATORS marks and goodwill for its own benefit, to the
3 likely confusion of the public, constitutes unfair competition under California
4 Business & Professions Code sections 17000, et seq. and 17200, et seq. and entitles
5 Plaintiff to such relief as set forth in those statutes. On information and belief,
6 Defendant's aforesaid acts are deliberate and willful. On information and belief,
7 Defendant is expanding the infringing uses of the EPIC RV mark and the
8 www.epicrv.com domain in California, in this district, and other areas of the U.S.
9 with full knowledge of Plaintiff's senior rights in its EPIC RV and EPIC RV
10 LIQUIDATORS marks, with the intention to usurp Plaintiff's rights.
11

12 46. By reason of Defendant's misconduct, Defendant has been unjustly
13 enriched at the expense of Plaintiff in a substantial sum, and Plaintiff is entitled to
14 the restitution of said sum which is as yet unknown to them. In addition, Plaintiff
15 is entitled to disgorgement of Defendant's ill-gotten gains in order to prevent
16 further acts of unfair competition.
17

18 47. Defendant's aforesaid acts are greatly and irreparably harming to
19 Plaintiff and will continue to harm Plaintiff unless restrained by this Court, and
20 therefore Plaintiff is without an adequate remedy at law.
21

COUNT 4

UNJUST ENRICHMENT UNDER COMMON LAW

48. Plaintiff repeats, realleges, and incorporates by reference paragraphs 1 through 47, inclusive above as though the same were fully set forth herein.

49. By virtue of Defendant's wrongful acts described above, Defendant has been unjustly enriched in an amount to be proven at trial.

50. Defendant's retention of monies gained through its deceptive business practices, infringements, and otherwise would serve to unjustly enrich Defendant and would be contrary to the interests of justice.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this court enter judgment in their favor and grant the following alternative and cumulative relief:

1. For an order that Defendant that Plaintiff's EPIC RV and EPIC RV LIQUIDATORS service marks have been and continue to be infringed by Defendant in violation of 15 U.S.C. § 1125(a);

2. For an order that Defendant use of the EPIC RV mark constitutes unfair competition under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a);

3. For an order that Defendant's use of the EPIC RV mark constitutes common law trademark infringement and common law unfair competition under California law;

1 4. For an order that Defendant's violation of Section 43(a) of the
2 Lanham Act was willful pursuant to 15 U.S.C. § 1117;
3

4 5. For an order that Defendant be required to account to Plaintiff for all
5 damages resulting from Defendant's unlawful activities;
6

7 6. For an order awarding Plaintiff all profits received by Defendant from
8 sales and revenues of any kind made as a result of its infringing actions pursuant to
9 15 U.S.C. § 1117(a), said amount to be trebled, together with prejudgment interest,
10 pursuant to 15 U.S.C. § 1117(b);
11

12 7. For an order awarding Plaintiff all damages resulting from
13 Defendant's infringing actions and unfair competition pursuant to 15 U.S.C.
14 § 1117(a), said amount to be trebled, together with prejudgment interest, pursuant
15 to 15 U.S.C. § 1117(b);
16

17 8. For an order that Defendant disgorge ill-gotten gains resulting from
18 their unlawful activities and restitution of Defendant's ill-gotten gains to Plaintiff;
19

20 9. For an order that this is an exceptional case entitling Plaintiff to
21 recover their reasonable attorney fees and costs pursuant to Section 35 of the
22 Lanham Act, 15 U.S.C. § 1117(a) and Federal Rules of Civil Procedure 54(d).
23

24 10. For a preliminary and permanent injunction against Defendant, its
25 agents, servants, employees, representatives, and attorneys, and all other persons in
26 active concert or participation with it enjoining and restraining them from:
27

28 (a) Using the mark EPIC RV mark alone or in combination with other terms

1 or designs, or using any reproduction, copy, or colorable imitation or
2 variation of the EPIC RV and EPIC RV LIQUIDATORS marks on or in
3 connection with the advertising, distribution, sale, or offering for sale of
4 any products or services;
5

6 (b) Doing any act or thing calculated or likely to cause confusion or mistake
7 in the minds of members of the public or prospective customers of
8 BEAUMONT's products or services as to the source of the products or
9 services offered for sale, distributed, or sold, or likely to deceive
10 members of the public, or prospective customers, into believing that
11 there is some connection between Defendant and BEAUMONT or its
12 EPIC RV and EPIC RV LIQUIDATORS marks;
13

14 (c) Representing or suggesting in any manner that Defendant is affiliated,
15 connected or associated with Plaintiff;
16

17 (d) Performing any other acts that are likely to lead the public to believe that
18 services or products provided by Defendant are in any manner licensed,
19 sponsored, approved or authorized by Plaintiff; and
20

21 (e) Directing Defendant to transfer to BEAUMONT (at no cost to
22 BEAUMONT) all domain names that contain or are confusingly similar
23 to the EPIC RV and EPIC RV LIQUIDATORS marks, including but not
24 limited to www.epicrv.com.
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28 11. For an order requiring Defendant to preserve through trial and then

1 deliver up for destruction, pursuant to 15 U.S.C. § 1118, all Internet webpages /
2 scripts / html code, articles, packages, wrappers, products, displays, labels, signs,
3
4 vehicle displays or signs, circulars, kits, packaging, letterhead, business cards,
5 promotional items, clothing, literature, sales aids, receptacles, templates or other
6 matter in the possession, custody, or under the control of Defendants or its agents
7
8 bearing the EPIC RV and EPIC RV LIQUIDATORS marks, or any mark that is
9 confusingly similar to or a colorable imitation of these marks;

10
11 12. For an order requiring Defendant to take all steps necessary to cancel
12 any state or local business registrations, including corporate name registrations and
13 dba filings, that include EPIC RV and EPIC RV LIQUIDATORS marks, or any
14 mark that is confusingly similar to or a colorable imitation thereof, or to amend
15 those registrations to names that do not include the EPIC RV and EPIC RV
16 LIQUIDATORS marks, and to remove any references to any business
17 registrations, including corporate names and dba filings, that include EPIC RV and
18 EPIC RV LIQUIDATORS marks;

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21 13. Pursuant to 15 U.S.C. § 1116(a), directing Defendant to file with the
22 Court and serve on Plaintiff within thirty (30) days after issuance of an injunction,
23 a report in writing and under oath setting forth in detail the manner and form in
24 which Defendant has complied with the Court's injunction;

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27 14. For an order from the Court that an asset freeze or constructive trust
28 be imposed over all monies and profits in Defendant's possession which rightfully

1 belong to Plaintiff.

2 15. For such other and further relief as the court deems just and equitable.

3
4 Dated: January 14, 2022

5 Whelan Law Group,
6 A Professional Corporation

7
8 By 

9 Brian Daniel Whelan, Esq.
10 Attorneys for Plaintiff,
11 BEAUMONT RV, INC.
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DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38 of the Federal Rules of Civil Procedure and the Seventh Amendment to the Constitution of the United States, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: January 14, 2022

Whelan Law Group
A Professional Corporation

By 

Brian Daniel Whelan, Esq.
Attorneys for Plaintiff,
BEAUMONT RV, INC.